40. In one page or less, name one of the worst United States or Wisconsin Supreme Court opinions in the last thirty years and explain why you feel that way.

Lee v. Weisman, 505 U.S. 577 (1992)
In 1989, a principle at a middle school in Providence, Rhode Island invited a Jewish rabbi to lead a voluntary prayer at the voluntary graduation ceremony. The parents of one student objected, arguing that the First Amendment prohibited such an invitation. The United States Supreme Court agreed. As a policy matter, it is not clear to me that government-led prayers in public school are an altogether good thing. My disagreement with this case rests upon its weak jurisprudential foundations.

First, legal analysis of a constitutional provision should begin with the original public meaning of the clause itself. This case does none of that. The Establishment Clause was, at least in large part, a federalism provision leaving regulation of religion to the states. But even accepting that it has some enduring application against state and local action, it can't be read to proscribe activity the authors of the First and/or Fourteenth Amendments would have understood to be very much in compliance with the First Amendment, as Justice Scalia's dissenting opinion ably points out.

Second, this case, and Establishment Clause jurisprudence generally, looks very little like law. Much of it has the symptoms of a Court discussing desireable [sic] social policy or the proper place of religion in public life, and then crafting a legal rule that makes sense in light of that policy. This is not how judges should make law; that is the legislature's job absent violation of a clear constitutional imperative.

Third, the opinion is filled with plain-old bad reasoning. Its conclusion that students are being coerced by the government into religious activity rests on two dubious propositions--that being present and respectful during a corporate prayer means acceptance of it, and that children are too impressionable to expose dissenters to the peer pressures of a roomful of people praying. Life in civil society requires us to stand or sit respectfully in all sorts of situations where we may have personal disagreements. The government would no more be forcing me to practice religion against my conscience by forcing me to listen to a Buddhist prayer than it would be abridging my free speech rights by forcing me to listen respectfully to a speech by a politician with whom I disagree. Similarly, students here are not forced to recite the prayer, but merely to listen to it if they attend the voluntary graduation ceremony. Even accepting the non-coercion principle, this was not coercion.

Thus, the opinion may or may not reach a desireable [sic] social policy outcome. But it is not the kind of legal reasoning, either in quality or in first principles, that should mark the judicial craft. Courts are at the nadir of legitimacy when their decisions set social policy for the people without grounding it in the constitutional text the people themselves have adopted.